

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its Judges; has been disbarred or suspended by a court or administrative agency; or has been disciplined by a Judge under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) *Disciplinary referral.* Except as provided in paragraph (e) of this section, a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the Commission receives a disciplinary referral, the matter shall be assigned a docket number.

(2) *Inquiry by the Commission.* The Commission shall conduct an inquiry concerning a disciplinary referral and shall determine whether disciplinary proceedings are warranted. The Commission may require persons to submit affidavits setting forth their knowledge of relevant circumstances. If the Commission determines that disciplinary proceedings are not warranted, it shall issue an order terminating the referral.

(3) *Transmittal and hearing.* Whenever, as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, determines that the circumstances warrant a hearing, the Commission's Chief Administrative Law Judge shall assign the matter to a Judge, other than the referring Judge, for hearing and decision. The Commission shall specify the disciplinary issues to be resolved through hearing and may designate counsel to prosecute the matter before the Judge. The Judge shall provide the opportunity for reply and hearing on the specific disciplinary matters at issue. The individual shall have the opportunity to present evidence and cross-examine witnesses. The Judge's decision shall

include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or disbarment from practice before the Commission.

(d) *Appeal from Judge's decision.* Any person adversely affected or aggrieved by the Judge's decision is entitled to review by the Commission. A person seeking such review shall file a notice of appeal with the Commission within 30 days after the issuance of the Judge's decision.

(e) *Misconduct before a Judge.* A Judge may order the removal of any person, including a representative of a party, who engages in disruptive conduct in the Judge's presence. If a representative is ordered removed, the Judge shall allow the party represented by the person a reasonable time to engage another representative. In all instances of removal of a person for disruptive conduct, the Judge shall place in the record a written statement on the matter. A party aggrieved by a Judge's order of removal may appeal by requesting interlocutory review pursuant to §2700.76 or, alternatively, may assign the Judge's ruling as error in a petition for discretionary review.

§ 2700.81 Recusal and disqualification.

(a) *Recusal.* A Commissioner or a Judge may recuse himself from a proceeding whenever he deems such action appropriate.

(b) *Request to withdraw.* A party may request a Commissioner or a Judge to withdraw on grounds of personal bias or other disqualification. A party shall make such a request by promptly filing an affidavit setting forth in detail the matters alleged to constitute personal bias or other grounds for disqualification.

(c) *Procedure if Commissioner or Judge does not withdraw.* If, upon being requested to withdraw pursuant to paragraph (b) of this section, the Commissioner or the Judge does not withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling. If the Judge does not withdraw, he shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the

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Commission stays the hearing or further proceedings upon the granting of a petition for interlocutory review of the Judge's decision not to withdraw.

§ 2700.82 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Ex parte communication* means an oral or written communication not on the public record concerning any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.

(2) *Status or informational request* means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.

(3) *Merits of a case*, which shall be broadly construed by the Commission, includes discussion of the factual or legal issues in a case or resolution of those issues.

(b) *Prohibited ex parte communication*. There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, Judge, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, amici, or other interested persons.

(c) *Procedure in case of violation*. (1) In the event a prohibited ex parte communication occurs, the Commission or the Judge may make such orders or take such action to remedy the effect of the ex parte communication as circumstances require. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) A memorandum setting forth all ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) *Inquiries*. Any inquiries concerning filing requirements, the status of cases before the Commission, or docket information shall be directed to the Office of General Counsel or the Docket Office of the Federal Mine Safety and Health Review Commission, 1730 K

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Street, N.W., Sixth Floor, Washington, DC 20006-3867.

§ 2700.83 Authority to sign orders.

The Chairman or other designated Commissioner is authorized to sign on behalf of the Commissioners, orders disposing of the following procedural motions: motions for extensions of time, motions for permission to file briefs in excess of page limits, motions to accept late filed briefs, motions to consolidate, motions to expedite proceedings, motions for oral argument, and similar procedural motions. A person aggrieved by such an order may, within 10 days of the date of the order, file a motion requesting that the order be signed by the participating Commissioners.

§ 2700.84 Effective date.

These rules are effective on May 3, 1993 and apply to cases initiated after they take effect. They also apply to further proceedings in cases then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event the former rules of procedure apply.

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Sec.

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AUTHORITY: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823).

SOURCE: 44 FR 2575, Jan. 12, 1979, unless otherwise noted.

§ 2701.1 Purpose and scope.

(a) *Purpose*. The purpose of this part is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open, to the extent practicable, the meetings of the Commission to public observation while preserving the Commission's ability to fulfill its responsibilities and